

1 (The proceedings resumed at 2:00 p.m.)

2

3 THE COURT: All right, Mr. McDonald.

4 MR. McDONALD: Thank you, Your Honor.

5 Bill, could we put up our demonstrative

6 No. 2, please, up on the screen.

7

8 BY MR. McDONALD: (Continuing)

9 Q You don't have a hard copy of this, Mr. Farber,  
10 so, hopefully, you can just the screen, but if you  
11 want a paper copy, please let me know.

12 A Sure.

13 Q I was talking before about that 98 percent number.  
14 I just wanted to put something up here. This was some  
15 data derived from a market report about supply chain  
16 management market shares in 2009.

17 You see the three big legends here, Oracle, Ariba,  
18 and SAP with the biggest percentage of the market  
19 there?

20 A I do.

21 Q Is that consistent with your understanding in the  
22 marketplace of who are the biggest supply chain  
23 management companies by market share in the U.S.?

24 A From a supply chain perspective, yes, not  
25 necessarily procurement, but certainly supply chain.

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1 Q If we asked the question specific to procurement,  
2 how would your answer change?

3 A I'm not sure if Oracle would fall in there versus  
4 others. I don't know.

5 Q Would you think Oracle still is one of the bigger  
6 ones, maybe not just the biggest?

7 A Yes, I would say so, sure.

8 Q Ariba and SAP, those are both licensees under the  
9 patents in this case, right?

10 A They are.

11 Q You see over there on the right side at about 2:30  
12 or 3 o'clock, the companies with the fourth through  
13 the tenth largest market shares, they accumulatively  
14 have about 14 percent of the market with 13.88  
15 percent? Do you see that?

16 MR. ROBERTSON: Your Honor, I'd like to pose  
17 an objection, if I could. This chart apparently is  
18 based on DX 424. If I might just direct Your Honor to  
19 DX 424, if you have it.

20 THE COURT: Is it in what you gave me?

21 MR. ROBERTSON: Their binder set 2 of 5.

22 THE COURT: Oh. 424?

23 MR. ROBERTSON: Yes, Your Honor. Defendant's  
24 Exhibit 424.

25 THE COURT: All right. I've got it.

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1 MR. ROBERTSON: You'll see, first of all,  
2 that this is directed to what is software worldwide  
3 market share up at the top, the supply chain  
4 management, and, secondly, it is one page, Your Honor,  
5 of a multipage Gartner report, apparently. So we have  
6 no ability to really determine how this data was  
7 assembled, what the criteria were for including it,  
8 and how the supply chain management market share and  
9 products were determined based on this.

10 So I can't cross-examine a chart that makes  
11 representations when I don't even have the full  
12 information with respect to what is being provided  
13 here. And if they had this one page, and certainly we  
14 believe they could provide the entire page because  
15 people subscribe to these reports.

16 In fact, the evidence at trial was that, in  
17 fact, they do subscribe.

18 MR. McDONALD: Your Honor, we had given this  
19 to them yesterday. This is news to me that they had  
20 any issues about this. This chart on Exhibit 424  
21 directly comes from the Gartner report that we  
22 provided them exhibits, Defendant's 419, which we have  
23 as a CD because it comes in an electronic form, an  
24 Excel spreadsheet. So it's pretty easy to connect the  
25 dots and we have would have been happy to do that

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1 ahead of time.

2           What you can see here on the document -- can  
3 we put DX 424 up on the screen? What you can do with  
4 the Excel spreadsheet is specifically specify a  
5 country there, the United States, and this is actually  
6 procurement specific.

7           So this is where this data comes from. So  
8 it's really right on the money here in terms of what  
9 we're talking about. That's why we put that source on  
10 the pie chart.

11           I'm not sure what the problem is going to be  
12 in terms of cross-examining. The data is what it is.  
13 They have got the CD with the whole Excel spreadsheet.  
14 If they had questions about it, they could have asked  
15 us those questions yesterday when we produced this to  
16 them.

17           MR. ROBERTSON: Nobody ever made a  
18 representation to us that some disk -- that this  
19 document 424 came from 419. It was a little difficult  
20 to connect the dots considering we have five binders  
21 here.

22           But, again, Your Honor, we had no idea  
23 exactly how they're defining supply chain management.  
24 Supply chain management doesn't necessarily mean  
25 electronic procurement as we're talking about here.

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1 It can be a lot more expansive. And what  
2 functionality we're discussing here, whether or not it  
3 actual involves the patents-in-suit.

4 THE COURT: It says market supply chain  
5 management, subsegment procurement. Country, United  
6 States. So I don't know what your objection is here?  
7 That they didn't give it to you? They did give it to  
8 you in its whole form. They just didn't tell you that  
9 they gave it to you; is that right?

10 MR. ROBERTSON: Well, it was given to us on a  
11 CD-ROM. I didn't understand that CD-ROM to be this  
12 whole report. So, yes, I did not fully appreciate  
13 that, Your Honor. But, you know what, Your Honor?  
14 Let's do this.

15 THE COURT: It shows that Lawson grew  
16 25 percent.

17 MR. ROBERTSON: Excuse me, sir?

18 THE COURT: It shows that Lawson grew  
19 25 percent. In '08, 24 percent and even in '09,  
20 25 percent. Shows Lawson was moving right along.

21 MR. ROBERTSON: Your Honor, I'll address this  
22 on redirect examination with the witness.

23 THE COURT: All right.

24 BY MR. McDONALD:

25 Q So I think we were talking, Mr. Farber, about if

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1 we were specific to procurement, would you view  
2 Oracle, Ariba and SAP as the three largest ones in the  
3 industry or not?

4 A If you just are talking about eProcurement, they'd  
5 probably be, yeah, probably the largest I would think.

6 Q And I think you indicated that that share of less  
7 than 2 percent for Lawson, that's not inconsistent  
8 with your experience in the marketplace; is that  
9 right?

10 A No, I didn't say that. I didn't know, so I  
11 couldn't respond to that.

12 Q Now, did you review this Gartner report from 2010  
13 that went into supply chain management, this Exhibit  
14 419 report yourself?

15 A I don't recall.

16 Q Have you seen it before outside of the lawsuit, I  
17 mean?

18 A No, I saw it in connection with the lawsuit. That  
19 was my recollection.

20 THE COURT: That was what? Your voice  
21 dropped off.

22 THE WITNESS: I have seen this chart now, but  
23 I haven't seen the full report.

24 THE COURT: Before now?

25 THE WITNESS: Well, I still haven't seen the

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1 full report. I see the chart. I'm not familiar with  
2 the full report.

3 Q Let's talk a little bit about the ERP providers  
4 that provide the suite of products. We talked about  
5 that a little earlier today. I think I heard the term  
6 you used when Mr. Robertson was asking you questions  
7 about stickiness of customers in terms of when  
8 somebody has them, they stay with the vendor who  
9 originally sold them the software. Do you remember  
10 using a term like that?

11 A I used the term "stickiness" is the ability that,  
12 you know, our clients have for us a low attrition  
13 rate. So it gives us the ability to try to cross and  
14 upsell them other solutions that we have.

15 Q For an ERP provider like SAP, if they provided  
16 products other than eProcurement, is a customer likely  
17 to be inclined to buy the eProcurement product from  
18 SAP?

19 A I don't know about the client side. I know from a  
20 marketing side. It gives SAP the capability to say,  
21 hey, you have something of ours already. So why not  
22 buy something else?

23 Q Are there functional advantages to the customer in  
24 terms of getting training from a single provider,  
25 getting maintenance from a single provider if they

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1 have service issues, they don't have to call two  
2 different companies to figure out the problems,  
3 advantages like that in sticking with the same ERP  
4 provider for an eProcurement product?

5 A I personally don't believe that to be the case.  
6 Maybe 20 years ago that was often the case, but I  
7 think my personal experience vendors have gotten  
8 better at working together and also integrating.  
9 There's more standards in the industry than there were  
10 many years ago. So really, in my opinion anyway, it  
11 hasn't really been an issue.

12 Q Do you run into it from the customer's  
13 perspective, they have an inclination they want to  
14 stick with the ERP provider in the first instance  
15 unless you give them a reason to switch?

16 A You see it in the ERP providers. You see it in  
17 SRN providers. You see it in every industry, I think,  
18 to some degree. Maybe some more or less. I don't  
19 know.

20 Q But if you're talking to a potential customer that  
21 already has an SAP suite of products, they're looking  
22 to add eProcurement, what is your sales pitch to that  
23 customer as to why they should use your product  
24 instead of SAP's?

25 A Sometimes it has do with functionality. Sometimes



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1 it has to do with cost. Sometimes it has do with  
2 speed of implementation. There's a lot of variables  
3 but those variable get defined when you know the  
4 client's requirements.

5 Q What do you say about functionality in that  
6 situation?

7 A There are some things depending upon what releases  
8 we're going up against. Some things our competitors  
9 don't provide that we may provide.

10 Q Can you be specific?

11 A Well, for example, we provide some advance  
12 reporting and historical analysis that's inherent in  
13 the product that maybe SAP doesn't provide. That may  
14 be an important feature for the customer. Whereas,  
15 others may have competitive advantages over us and  
16 they'll highlight those.

17 So I don't compete with this list of vendors. A  
18 lot of them aren't procurement. Some of them are  
19 contingent labor. Some are contract management  
20 providers. These aren't all eProcurement providers on  
21 this list.

22 Q Sciquest is, right?

23 A Sciquest, yes.

24 Q Perfect Commerce is, right?

25 A Yes.

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1 Q Ariba is, right?

2 A Yes.

3 Q SAP and Oracle also eProcurement, right?

4 A Sure.

5 Q Are there any specific companies listed in this  
6 chart here? Are you looking at the one on the screen  
7 or the pie chart?

8 A I looked at both.

9 Q Okay. Well, let's stick with the pie chart  
10 because this has fewer names. So go back to the  
11 demonstrative number 2. Do you see over there is a  
12 total of 10 companies listed by name here?

13 A Yes.

14 Q I've already gone through a few of those. Are  
15 there any of the ones listed here, of the 10, are  
16 there any that don't provide eProcurement?

17 A Intourist I don't believe provides. Fieldglass  
18 Zycus, IQ Navigator, I haven't seen them having  
19 eProcurement software.

20 Q Do you know one way or the other whether they do?

21 A In some instances, I do, yes.

22 Q In which instances are you sure they don't provide  
23 eProcurement?

24 A I'm pretty sure that Intourist does not. I'm  
25 pretty sure that Fieldglass does not. Zycus does not

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1 and I'm almost sure about IQ Navigator, but I can't be  
2 positive, though. That's it on this list.

3 So they are part of the supply chain management  
4 analysis that apparently Gartner did, which is a  
5 larger sector because it encompasses -- supply chain  
6 management encompasses a lot of different disciplines.

7 Q If we can go back to Exhibit 424. Do you  
8 understand this indicated a subsegment of procurement?

9 A Sure, but if you have the report, it will explain  
10 where they placed Zycus, where they placed IQ  
11 Navigator, where they placed Upside Software.

12 I have a business relationship with the CEO of  
13 Upside Software, and I know as a fact that they don't  
14 have procurement. I know as a fact that they do  
15 contract management.

16 So in terms of supply chain management, even  
17 though they have a subsection of procurement, contract  
18 management is a component of the procurement segment  
19 for sure, but it doesn't mean they perform electronic  
20 procurement. They're doing contracting software for  
21 the procurement industry.

22 THE COURT: Do you know the extent to which  
23 the Ariba and SAP market share is made up of products  
24 that are sold that were at issue in the litigation and  
25 subject to the licenses that were granted by ePlus?

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1 THE WITNESS: Well --

2 THE COURT: In other words, could you break  
3 out what ePlus, what Oracle, and Ariba's situation  
4 would be and tell me how much of that market share  
5 comes from using infringing products that are  
6 protected by the license?

7 THE WITNESS: Let me make sure I understand  
8 your question. Are you asking -- let's say, Ariba is  
9 one example. Of all the things that Ariba offers,  
10 what percentage of that?

11 THE COURT: In the procurement area.

12 THE WITNESS: What part of their -- I would  
13 speculate to that.

14 THE COURT: You don't know.

15 THE WITNESS: I don't know the precise  
16 numbers, yes.

17 THE COURT: Don't guess.

18 BY MR. McDONALD:

19 Q Do you have Defendant's Exhibit 416 in front of  
20 you, Mr. Farber? It's in binder 2 of 5.

21 A I have 5 of 5.

22 THE COURT: What is it?

23 MR. McDONALD: Binder 205.

24 THE CLERK: Defendant's 416, Your Honor.

25 MR. McDONALD: Defendant's 416 in that

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1 binder. It's near the end.

2 THE WITNESS: I do.

3 Q This is a Gartner report. Do you see that, Mr.  
4 Farber?

5 A Yes.

6 Q You have seen some Gartner reports before, right?

7 A In my time, yes.

8 Q With respect to this one, you see the title here,  
9 "Best of Breed eProcurement Vendors"?

10 A Okay.

11 Q Is that what ePlus would be considered to be?

12 A I don't know. It depends on the analyst and how  
13 they feel that year.

14 Q Do you consider ePlus to be a best of breed  
15 eProcurement vendor?

16 A I'd like to think so.

17 Q Do you see at page 15 of this document or 18337?  
18 Would you turn to that, please? There's a little  
19 section about ePlus on it.

20 A Sure. 18337?

21 Q Yes.

22 A Okay.

23 Q Did ePlus participate at all in giving Gartner  
24 some information that would have gone into this  
25 report?

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1 A I don't recall.

2 Q Has ePlus provided Gartner information from time  
3 to time?

4 A Some years, yes, and some years we haven't.

5 Q Do you see there's a description there in ePlus.  
6 If you go to the third paragraph down where it says  
7 "industry focus." It indicates ePlus has eProcurement  
8 customers across all industries, but has notable  
9 success in the retail, manufacturing and financial  
10 services industries, do you see that?

11 A I see it.

12 Q Would you agree that retail, manufacturing and  
13 financial services are places where you're more  
14 successful than other industries generally when it  
15 comes to eProcurement?

16 A Absolutely not.

17 Q Which industries, if any, would you say you're  
18 more successful in than others?

19 A Well, I would say in spite of ourselves we're in a  
20 lot of different verticals, and I don't know that one  
21 is more than the other, but in financial management,  
22 maybe we only have just one or two customers. We have  
23 a few customers in retail. We have a number in  
24 manufacturing. We have a number in health care. We  
25 have a number in transportation. I don't think that

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1 one overshadows the other.

2 Now, so I don't know -- let me just see who wrote  
3 the report. That will give me an idea. Debbie  
4 Wilson.

5 There are years, like I said, that we do provide  
6 information to Gartner and there's years that we  
7 don't. We don't necessarily have a relationship that  
8 we brief them on an annual basis. This year was the  
9 first year in a few years we actually briefed them.

10 Q Do you know where Gartner would have got that  
11 information about your industry focus if it wasn't  
12 from you?

13 A No, it's one of the problems that I have with  
14 Gartner as many other vendors do. Gartner is Gartner,  
15 and they'll say and do what they want to do and what  
16 they think.

17 Q You think they are not reliable reports?

18 A You know, it depends on the analyst and it depends  
19 on -- you know, every vendor has issues to some degree  
20 with analysts. We've talked about this in my  
21 deposition.

22 Gartner, to me, is a paid for hire, pay-to-play  
23 vendor. It's very expensive to deal with Gartner. So  
24 my last company before ePlus, we spent \$12 million a  
25 year as a client of Gartner's and still had issues

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1 with them. So I'm not a believer.

2 I'm not discrediting what they say. I'm just  
3 saying that they would come out with reports without  
4 having full briefs by the vendors, and I have  
5 historically taken issue.

6 I don't know specifically on this report if they  
7 were briefed in '09 or not. I know we show up in a  
8 2010 report as well.

9 Q Can you turn to page 9 of the report 18331. It's  
10 a little chart. Table 2.

11 A I'm sorry. Page 9, you said?

12 Q Page 9 of the report also numbered 418331.

13 A Okay. I'm with you.

14 Q Do you see across the top row there's a list of  
15 company names including ePlus?

16 A Yes, I do.

17 Q Includes Sciquest, Perfect Commerce and Variant  
18 Technologies among several others, right?

19 A I see that.

20 Q Are these companies that you're familiar with as  
21 best of breed eProcurement vendors?

22 A Not all of them.

23 Q Which ones are you familiar with other than the  
24 ones I mentioned?

25 A I'm familiar with Ariba, and I have some



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1 familiarity with Bestware, Coopa, Caturra, Perfect,  
2 Sediment, limited exposure to purchasing that,  
3 Sciquest and Variant.

4 Q Are these all competitors of yours among  
5 eProcurement products?

6 A Yeah. Different times they could be, sure.

7 Q If you could turn to the two pages earlier, page  
8 7. Do you see there's an inclusion criteria list on  
9 the bottom half of the page?

10 A Page 7, you said?

11 Q Right?

12 A I just went too far. Okay.

13 Q Do you see there's an inclusion criteria for this  
14 best of breed report that Gartner provides here for  
15 what vendors have to have to be included?

16 A I see.

17 Q Now, one of them they list here is the third  
18 bullet point, support for either open catalog  
19 interface, OCI or CXML for Punchout to supplier  
20 websites for catalog content. Do you see that?

21 A I do.

22 Q I think in your earlier testimony with Mr.  
23 Robertson you indicated that Punchout has become an  
24 industry standard. Did I get that right?

25 A Correct.

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1 Q Does that mean it's pretty much all the  
2 competition out there that's a viable competition in  
3 eProcurement have this Punchout capability?

4 A I can't say that every single one does. I think  
5 they'd be foolish not to.

6 Q In your experience when you're competing with  
7 other companies, have you run into pretty much all  
8 your competitors having Punchout these days?

9 A I don't see their responses. Like I'm saying,  
10 they'd be foolish not to, but I'm assuming they would.

11 Q What's your basis for saying it's an industry  
12 standard?

13 A Well, there's industry standard organizations that  
14 are created around technologies. There's an industry  
15 standard body called CXML.org. And being an industry  
16 standard, it provides detailed information about CXML  
17 and there's a lot of different things that you could  
18 do with CXML beyond just punching it out.

19 It could be used for exchanging of invoices and  
20 you could use other technologies to do that as well.

21 Q Do you view Punchout as one of the technologies  
22 covered by the patents involved in this case?

23 A Do I personally view it?

24 Q Yes.

25 A Yes.

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1 Q I'd like to turn now to how long ePlus knew about  
2 Lawson before they brought the suit. The suit was  
3 brought in May of 2009 against Lawson; is that right?

4 A Yeah, that sounds right.

5 Q Do you recall when ePlus sought damages, its  
6 expert indicated that Lawson had been using the  
7 infringing technology since 2002?

8 A That's what I understand, yes.

9 Q Between 2002 and May of 2009, did ePlus ever  
10 contact Lawson about the patents?

11 A I don't think there would have been a reason to  
12 prior to that.

13 Q Why not?

14 A Well, just because somebody competes with ePlus  
15 doesn't mean that they're infringing. So I'm not  
16 going to accuse somebody of infringing until a  
17 thorough analysis is performed to make that  
18 determination or at least have a very high degree of  
19 certainty in order to then determine what the next  
20 step is going to be.

21 Q Well, prior to May of 2009, did you view Lawson as  
22 a competitor who was a significant competitor of  
23 yours?

24 A Yes, we certainly competed with them, sure.

25 Q Did you undertake any effort before you sued them

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1 to determine whether they might be using your patented  
2 technology?

3 A The effort that we took was just prior to filing  
4 suit. We had asked our counsel to help us and look  
5 deeper to make that determination with us because  
6 prior to that, like I said, we were involved in other  
7 things with limited resources and didn't have that  
8 time to do it.

9 Q Did ePlus look at Lawson as a significant  
10 competitor in 2007?

11 A You know, I don't know year by year what was  
12 considered significant or not significant. I think  
13 we've talked about many times how each year the  
14 climate changes.

15 Q I understand that, but you were in charge of the  
16 division in 2007, right?

17 A I was.

18 THE COURT: I think the question is: Why  
19 didn't you go look at whether Lawson infringed before  
20 2009? Why didn't you look when you knew they were  
21 competing from 2002 on is the question.

22 THE WITNESS: Well, A, the first time we  
23 decided to enforce our patents was with Ariba, Your  
24 Honor. And I think, if I'm not mistaken, that was  
25 like 2005.

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1           So, you know, that expended a lot of time.  
2       And we knew there were other competitors. We didn't  
3       know if all those competitors infringed. A lot of  
4       those people that we thought were competitors in 2005  
5       aren't in business today.

6           So we didn't have the resources, manpower,  
7       people, unlimited legal budget to go after everybody  
8       at once, and that wasn't our intention.

9           After that we wanted to focus on our business  
10       and then a decision was made by the executive  
11       management and the board to protect our patent with  
12       SAP, and we through, again, a multiyear process with  
13       SAP.

14           And then, you know, we were recognizing that  
15       a number of different things were going on with  
16       Lawson. We were getting beat up a bit. And to us  
17       that was the next logical evaluation to do.

18           In concert, we made the risky decision to  
19       also include in that suit three other defendants. And  
20       we knew that that could potentially take up a  
21       significant amount of our time as well.

22           So, you know, we're not the largest of  
23       companies with unlimited budgets and resources. And  
24       speculation doesn't always prove correct. So, you  
25       know, we made our decision, you know, a number of

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1 months before the lawsuit to be able to do that.

2           There are a lot of companies that we compete  
3 with, you know, that I find out, you know, don't do  
4 certain things. That surprised me. And, you know, if  
5 we don't take our time and look at these things, there  
6 would be a lot of frivolous suits, I would suspect.

7 Q In 2007, did you look at Lawson's competition as  
8 irreparably harming ePlus?

9 A You know, I think when you put the summation of,  
10 you know, the number of years that we're competing,  
11 the number of clients that we're talking about, the  
12 number of losses, and the number of losses that could  
13 continue, I'd say, yeah, there's a good possibility.

14 Q Did you do anything in 2007 to investigate whether  
15 or not Lawson was infringing any of your patents?

16           MR. ROBERTSON: Objection. It's been asked  
17 and answered now. He covered this ground.

18           THE COURT: Overruled.

19 A In 2007, I think we were involved with other  
20 litigation.

21 Q Please answer my question so we have these  
22 questions asked and answered.

23 A Okay.

24 Q Did you investigate in 2007 whether or not Lawson  
25 was infringing any of your patents?

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1 A No.

2 Q At that point you didn't have any other lawsuits,  
3 right?

4 A I have to go through the timetable. We may have  
5 just been coming off one.

6 Q You settled with SAP in early '06, didn't you?

7 A I'd have to go back and look at the agreement  
8 date, but it's possible.

9 Q Everybody that you ever sued for infringing these  
10 patents wound up getting a license from you in  
11 exchange for money, right?

12 A Everyone that we sued? Yeah. There was  
13 uniqueness to each of those licenses, but we did  
14 settle with them.

15 Q Were any of Ariba, SAP, Perfect Commerce,  
16 Sciquest, or Variant Technologies -- they were all  
17 competitors of yours, right?

18 A Yes.

19 Q Is it your position that competition with ePlus  
20 means that ePlus is being irreparably harmed if it's  
21 an infringer that's competing with you?

22 A I don't know all the legal ramifications of what  
23 you're asking, so I'm not quite sure how to answer  
24 that.

25 Q You understand the issue of harm, right?

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1 A Sure.

2 Q Did those companies, Ariba, SAP, Perfect Commerce  
3 Sciquest, or Variant Technologies, did they take any  
4 customers from you?

5 A Over the duration of competition, yeah.

6 Q At any time?

7 A Sure.

8 Q Have they taken more customers from you than  
9 Lawson?

10 A I don't know.

11 THE COURT: Mr. McDonald, I'm getting a  
12 little lost in all of this. Is it your theory here to  
13 show that a small company that owns patents has to sue  
14 all of the people it thinks might infringe all at the  
15 same time no matter what its resources are?

16 MR. McDONALD: No, but there is law for one  
17 thing beginning in early 2006, they did not have any  
18 lawsuits pending at that time. So there's really no  
19 reason they couldn't have at least communicated with  
20 Lawson and talked to them about the patent  
21 infringement. You don't have to sue everybody you  
22 think is infringing. You can talk to them, pick up  
23 the phone, and send them a letter. There are  
24 alternatives to that, number one.

25 THE COURT: They might think differently



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1 based on what they've seen here according to what he  
2 says.

3 MR. McDONALD: The fact is there's an option.

4 Second, the Federal Circuit law does excuse  
5 delay for other law suits unless the patent owner  
6 actually contacts the other infringers and says, I  
7 have this lawsuit pending against another infringer.  
8 That's why I'm not coming after you right now.

9 This is kind of a lay in the weeds type of  
10 situation, and there are some things that the patent  
11 owner has to do. They don't have to sue everybody,  
12 but they have to have at some level some  
13 communications.

14 THE COURT: Sounds to me like you want them  
15 to do more than what's reasonable to ask them to do.  
16 There's a limit to what people can pay lawyers. The  
17 business world doesn't exist to fund patent lawsuits.  
18 The business world exists to try to make money.

19 MR. McDONALD: If you feel as a company that  
20 you're being irreparably harmed by a competitor who is  
21 an infringer to the extent you think hospitals should  
22 be enjoined, there's probably something you should be  
23 doing about that.

24 THE COURT: You can argue that, but to the  
25 extent you have infringed, it's time to stop it. And

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1 you can't go back and redo all the world and what  
2 happened in the business world in order to keep that  
3 from happening.

4 So I don't understand what you're doing by  
5 asking them a lot of these questions. Sounds to me  
6 like because they're small and because you don't have  
7 the 1.46 of the market, you think an injunction is not  
8 appropriate, and I don't understand why that's so.

9 MR. McDONALD: For one thing, ePlus' sales  
10 are over \$700 million.

11 Q Is that right, Mr. Farber?

12 A The reselling of other equipment and everything  
13 else.

14 Q The whole company.

15 A Sure.

16 Q About the same size as Lawson, isn't it, in terms  
17 of annual revenues?

18 A You're not comparing apples because Lawson is  
19 selling software that has one type of margin. EPlus  
20 is selling other people's hardware that we don't  
21 manufacture.

22 So when you talk about we're selling 6 or 700  
23 million, that's about \$70 million in actual margin in  
24 revenue that hits our bottom line, not 700 million,  
25 because we're selling somebody else's. We only get a

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1 small percentage of that.

2 So the top line looks very big. The bottom line  
3 number is very small in comparison. 10 percent of it.

4 Q Between Ariba and SAP settlements by 2006 you had  
5 over \$54 million in settlement money, cash in the  
6 bank, right?

7 A Yes.

8 Q Was that money that you could have used to  
9 investigate whether Lawson's products were infringing?

10 A Well, let me say this.

11 Q Why don't you please answer my question. Couldn't  
12 you have used that money?

13 THE COURT: He's trying to answer the  
14 question. Let him answer.

15 A The answer to that is no. And the reason -- can I  
16 talk about the reason?

17 THE COURT: Yes.

18 A The reason is that after the SAP litigation, there  
19 were about a thousand companies in the United States  
20 that received letters to investigate them on how stock  
21 options were submitted to officers and employees of  
22 the company. And there was a two-year process that we  
23 had to undergo also under legal review to ensure that  
24 we did everything by the book that was required from  
25 an accounting principal.

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1 And the whole company was involved at that time  
2 with as many resources as possible to make sure that  
3 we had, in fact, done everything by the books and  
4 reported it as such.

5 So were we going to undertake another  
6 investigation of a third party lawsuit at that time?  
7 Absolutely not. We do not have unlimited resources.

8 Q Well, you kept going with your day to day business  
9 throughout that time period, right?

10 A We continued to go with our day to day business,  
11 yes.

12 Q What did you do with the \$55 million?

13 MR. ROBERTSON: Your Honor, I'm going to  
14 object. We're getting far afield here. I was hoping  
15 we were going to finish this in one day.

16 THE COURT: We are going to. Sustained.

17 BY MR. McDONALD:

18 Q You understand that during the discovery phase of  
19 this case when Lawson asked ePlus what it was claiming  
20 in damages, ePlus did not assert any lost profits or  
21 price erosion due to competition from Lawson, right?

22 A I'm not -- I don't recall what was said at that  
23 time.

24 Q Do I understand right that you're asking the judge  
25 to stop Lawson from servicing existing RSS and

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1 Punchout customers including hospitals?

2 A I think that what we're asking is to enjoin Lawson  
3 from selling, servicing, and maintaining the customers  
4 for the products that the jury found Lawson to  
5 infringe upon.

6 Q That does include precluding Lawson from servicing  
7 existing RSS and Punchout customers; is that right?

8 A That would be correct.

9 Q Are you seeking an injunction against Lawson  
10 servicing any customers that don't have RSS or  
11 Punchout?

12 A Well, I think it was more than RSS and Punchout  
13 right? It was RSS Punchout, I think there was EDI,  
14 the foundational software.

15 Q Let me understand what you're asking. If a  
16 customer had Lawson's system foundation, but they  
17 don't have RSS or Punchout, are you trying to get an  
18 injunction against Lawson servicing those existing  
19 customers?

20 MR. ROBERTSON: Objection, Your Honor. This  
21 is calling for legal conclusions that are beyond the  
22 scope and competency of this witness. What --

23 THE COURT: If he knows, he can answer the  
24 question.

25 If that component was found to be infringing,

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1 then the question is: Are you seeking an injunction  
2 against use and service of that component? Is that  
3 right? Was that found to be infringing?

4 MR. McDONALD: No.

5 THE COURT: Then why would you ask that  
6 question?

7 MR. McDONALD: Because they never told us  
8 what they're asking for.

9 THE COURT: You can't get an injunction  
10 against non-infringing products anyway.

11 MR. McDONALD: I can't tell what they're  
12 asking for yet.

13 THE COURT: Well, I think you'll have to  
14 figure that out somewhere else because one of the  
15 things you can't do is get an injunction against a  
16 non-infringing product as far as I know.

17 MR. ROBERTSON: We're not asking for that,  
18 Your Honor. There are three configurations.

19 THE COURT: Okay. I don't need to explore  
20 whether they are asking for an injunction against all  
21 the things that weren't found infringing or alleged to  
22 be infringed.

23 I don't know where you-all are on the  
24 landscape of injunction law, but you're pretty far  
25 afield now. So let's get a foot back on the base and

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1 let's get going.

2 BY MR. McDONALD:

3 Q How many employees does your division have that  
4 service ePlus' existing software to customers in  
5 eProcurement?

6 A Total is probably, I'd say, close to 100.

7 Q That's within your system's division?

8 A Systems, content, sure.

9 Q Do they do anything other than service customers,  
10 those hundred people?

11 A Develop, sell, support.

12 THE COURT: Is this the 90 plus the five or  
13 so that you were talking about earlier?

14 THE WITNESS: I'm sorry, Your Honor?

15 THE COURT: Is this the 90 people and the  
16 five you were talking about earlier?

17 THE WITNESS: I don't recall -- oh, yes.

18 THE COURT: Sales people.

19 THE WITNESS: Well, no, no. It's different.  
20 We're talking about that are paid out of the systems  
21 department versus the 90 that are in other divisions.

22 THE COURT: And their job is to service  
23 existing clients; is that right?

24 THE WITNESS: To sell, service, develop new  
25 releases, create new product for that vertical market.

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1 BY MR. McDONALD:

2 Q Do you have any employees in your division that  
3 are dedicated to solving customer problems when they  
4 have a problem using Procure+?

5 A It's the same group.

6 Q Are any of them dedicated to that job full-time?

7 A We have a small support group, what we call our  
8 level 1 group.

9 Q How many employees are full time in that group, if  
10 that's an answer to my question?

11 A I'd have to go back, but I think it's less than a  
12 dozen.

13 Q That's the customers you need to service your  
14 existing 65 or so Procure+ customers?

15 THE COURT: That's the not customers. That's  
16 something else. Are you talking about the people they  
17 need to service the existing customers?

18 MR. McDONALD: No, I'm talking about existing  
19 customers that have a problem.

20 THE COURT: I think you were asking about the  
21 customers. You just got your words mixed up.

22 MR. McDONALD: Maybe I misspoke.

23 BY MR. McDONALD:

24 Q How many customers do you currently have of  
25 Procure+?



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1 A 65.

2 Q When they have a problem, how many full-time  
3 people do you have on staff that have the job of  
4 helping those customers solve a problem with the  
5 system?

6 A Well, everybody is full time and everybody is  
7 responsible to take ownership to solve a problem.

8 THE COURT: Do you have anybody whose  
9 dedicated job is to do nothing but solve problems of  
10 the 65 customers, I think is the question.

11 THE WITNESS: There's probably 12 people,  
12 Your Honor, that will answer the phone, and then  
13 determine if they can answer the question, they will  
14 right then and there, or they'll escalate it to one or  
15 the other 80 or 90 some odd people that best can  
16 resolve that customer's problem.

17 Q So the other 80 or 90 people, are they in R&D or  
18 sales or what?

19 A Some are in general support, some are in R&D, some  
20 could be in sales, absolutely.

21 Q How many total employees do you have in the  
22 content and systems divisions?

23 A If you combine them together, it's probably a  
24 little over 100.

25 Q And 90 of them have some responsibility of

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1 supporting existing customers?

2 A We all have responsibility. There's no  
3 delineation. Everybody has a responsibility to  
4 support customers.

5 Q Maybe I should be more specific. If they have a  
6 problem, some sort of technical glitch, how many of  
7 those employees have responsibility solving those  
8 technology problems?

9 A Every one minus the five. Depending on what the  
10 problem is, we have an online tracking system, and the  
11 person or group that's best capable of solving that  
12 problem, it goes to them, because internally we view  
13 if a customer has an issue based on the severity  
14 levels that we assign, 1 through 4, the customer comes  
15 before development and other things that we're doing.  
16 So we kind of rally to solve those problems first.

17 Q In terms of would you agree that if a customer  
18 that's a hospital, if they don't have support for  
19 software, they basically can't use it?

20 A I think that holds true for everybody.

21 Q Hospitals and other customers as well, they just  
22 can't use it unless they have the proper support,  
23 right?

24 A No. There's a number of our clients that actually  
25 operate our software that don't receive support from

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1 us and have been doing it for years.

2 Q Let's go back to hospitals only. Hospitals would  
3 need a procurement product to be supported in order to  
4 use it for their supplies properly, correct?

5 A I couldn't answer that.

6 Q You don't know?

7 A It depends on the individual hospital.

8 THE COURT: They may have their own support  
9 people in house and know exactly what they're doing?

10 THE WITNESS: Absolutely.

11 Q Is it your understanding that would comply with  
12 the requirements that hospitals have if they just have  
13 internal support?

14 MR. ROBERTSON: Objection. It lacks  
15 foundation, Your Honor.

16 THE WITNESS: Are you talking about HEPA  
17 requirements?

18 THE COURT: No, HEPA doesn't deal with that.

19 THE WITNESS: That's what I'm trying to  
20 figure out what type of requirements.

21 Q Are there any other requirements that hospitals  
22 typically have regarding having support for software?

23 THE COURT: What kind of software?

24 MR. McDONALD: Procurement software.

25 A I don't know.

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1 THE COURT: They clearly have support for  
2 software that's used in the middle of surgery, and  
3 they have requirements that are not governed always by  
4 state law. They are governed by the practical fact  
5 that if they don't have support, they can get sued if  
6 the software doesn't work. But there's not much of  
7 that. None of this involves that. None of this  
8 product involves that kind of issue.

9 So I think he's a little confused, as am I,  
10 about what you're talking about. The mere fact that a  
11 hospital has some requirements to live up to is  
12 neither here nor there without knowing exactly what  
13 the requirements are, and I think that the question  
14 has to be refined more.

15 Let's go on to something else.

16 BY MR. McDONALD:

17 Q You're not personally familiar with what hospitals  
18 would require by way of support, is that fair?

19 A For procurement, no, I'm not.

20 Q You talked earlier about how long it would take a  
21 customer once they pick Procure+, how long it would  
22 take them to implement. Is it fair to say that taking  
23 about a year to do that, even that would be fairly  
24 quick for ePlus?

25 A For somebody who has a procurement solution

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1 already in place?

2 THE COURT: The only thing that makes any  
3 difference in this case is whether somebody has  
4 Lawson's procurement in place. And I'm not sure the  
5 extent to which that has a bearing on it, but that is  
6 the only thing that makes a difference.

7 So if they have Lawson's in place, which is  
8 the only thing that would be enjoined the use of under  
9 their request for an injunction, then what's your  
10 question?

11 If ePlus came in and was the substitute  
12 vendor, how long would it take ePlus to do it or if  
13 Oracle came in or if Ariba came in? What are we  
14 talking about?

15 MR. McDONALD: I think we can talk about  
16 ePlus particularly.

17 THE COURT: All right. Then ask the question  
18 that with way and get it straight. You're asking a  
19 much more general question.

20 Q With Procure+, would you agree that a larger  
21 organization generally takes longer to implement a  
22 transition to the Procure+ software than a smaller  
23 organization?

24 A No, I wouldn't.

25 Q Are there any factors other than whether or not

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1 they already had a procurement type of system in place  
2 that would affect the timing on implementation?

3 A Having a procurement system previously in place  
4 effects the timing in a major way.

5 Q What other factors are there?

6 A Well, not having a procurement system in place.  
7 Most of the time of an implementation, as I said  
8 earlier --

9 THE COURT: No, we're talking about for  
10 people who have the a procurement system in place.  
11 That's all we're talking about right now.

12 THE WITNESS: I'm sorry.

13 THE COURT: What other factors besides having  
14 had the system, in effect, have an impact on the time  
15 it takes to transition?

16 THE WITNESS: If you did a one to one  
17 transition, what I call a vanilla transition, in which  
18 you're taking everything in its current state and  
19 transitioning it to an ePlus procurement solution,  
20 Procure+, that's the shortest path.

21 If they decided, hey, while you're doing  
22 this, we never really liked the way this type of  
23 functionality worked.

24 THE COURT: You're not going to do that.  
25 What he's talking about is what's the quickest you can

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1 get it done.

2 Isn't that right?

3 MR. McDONALD: I'm just asking what factors  
4 affect how long other than the fact --

5 THE COURT: Well, if they want to change the  
6 system, that's going to take more time than if they  
7 didn't want to change the system?

8 THE WITNESS: That's correct.

9 THE COURT: What else?

10 THE WITNESS: That's primarily it. There's  
11 not a lot of factors here.

12 Q Well, are you familiar with an ePlus customer  
13 American Skiing Company?

14 A Yeah, I have familiarity with them, sure.

15 Q That's a Procure+ customer, right?

16 A It used to be.

17 THE COURT: Is that like in the things you  
18 ride on to go downhill?

19 MR. McDONALD: In the snow.

20 A Yes. They own mountains.

21 THE COURT: Skiing.

22 THE WITNESS: Skiing resorts and mountains.

23 Q Did they have a procurement system in place before  
24 you came to them?

25 A Don't know.

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1 Q That one took a little over a year to implement,  
2 right?

3 A I don't recall.

4 Q I have a couple of press releases here.

5 MR. McDONALD: May I approach, Your Honor?

6 A Are these recent ones?

7 Q One is from December '05 and the other is from  
8 March of '07, right?

9 A Uh-huh.

10 Q So December of '05, the headline indicates that  
11 American Skiing selected or chose Procure+, right?

12 A Yep, I do.

13 Q And March of '07, a little over a year later, it  
14 indicates that the same company had completed  
15 eProcurement and inventory solution implementation  
16 nationwide within tight deadlines, do you see that?

17 A Yes, I do.

18 Q Does seeing this refresh your recollection at all  
19 as to whether or not American Skiing already had a  
20 procurement solution in place or not?

21 A No, it doesn't change my recollection of whether  
22 they had a prior procurement solution. It makes me  
23 recall the fact that they had an implementation that  
24 was done at one of their mountains, and over the  
25 course of a year or two they decided to migrate to



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1 other resorts and properties that they had.

2 Q So the tight deadlines that are referred to in the  
3 headline of March '07, what tight deadlines is that  
4 referring to?

5 A Which one are you looking at? '05?

6 Q March of '07. It's the sub headline, I guess you  
7 can call it. It talks about completing the  
8 implementation nationwide within tight deadlines.

9 A Maybe they viewed the way they wanted to roll it  
10 out within their schedules across the skiing portions  
11 of the country, and I think also Canada, if I'm not  
12 mistaken. Maybe they considered that to have tight  
13 deadlines for them. We're not in control of how they  
14 decide to move the application from resort to resort.  
15 They make that decision and time line. We install the  
16 software and generally do it in a fairly expedient  
17 time frame.

18 Q You think this time frame from this press release  
19 regarding selection of ePlus to announcing the  
20 implementation, that's about one year and three  
21 months, right?

22 A Between the two releases, yes.

23 THE COURT: Well, if you're installing on an  
24 existing system, ePlus, the existing system can  
25 continue to run or not?

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1 THE WITNESS: Absolutely.

2 THE COURT: If there's a changeover, does  
3 that occur on one day, or one hour, or one minute, or  
4 one year, or what?

5 THE WITNESS: No, it's generally scheduled.  
6 So, you know, let's say you pick a day 90 days out,  
7 and because if everything is moving from one state to  
8 the other, there's not a lot of work to do. The users  
9 are defined; the work flow and approvals and  
10 suppliers. So it's really up to my folks. There's  
11 not a lot of engagement they have to do with the  
12 customer.

13 All that data is imported. We have utilities  
14 to import all this data into our system. Most of the  
15 time, it's going actually going to be for the customer  
16 just to test it within that 30 to 90-day window. They  
17 can run it parallel for a while, which customers do,  
18 or they can decide on a specific day to switch.

19 THE COURT: I have procurement software. I  
20 tell you I want to use yours. I want you to do it. I  
21 don't want to change it. I don't want to do anything  
22 else. I just want to change over. I'm fed up with  
23 who I'm using. And I need it in -- this is Friday. I  
24 need you to do this by Monday because I want to fire  
25 these people. Can you do it by Monday or not?

FARBER - CROSS

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1 THE WITNESS: Friday to Monday is a little  
2 aggressive.

3 THE COURT: What the quickest you can do it?

4 THE WITNESS: 30 to 90 days, I think, would  
5 be more acceptable.

6 THE COURT: Is that because I have to test  
7 it?

8 THE WITNESS: I would like you to test it.

9 THE COURT: I don't want to test it. I want  
10 you to test it. I want you to get it done.

11 THE WITNESS: The best that we could possibly  
12 do competently would be 30 days.

13 THE COURT: Okay.

14 BY MR. McDONALD:

15 Q Do customers typically require that they have a  
16 chance to test it as well?

17 A Most of them do.

18 Q Do they have internal folks that have to approve  
19 the purchase and implementation and technology and  
20 other areas of the company?

21 A At times. There are sign-offs. It depends on the  
22 company, how they are organized.

23 Q Is that typical of public sector customers?

24 A I wouldn't call it typical. I've seen it happen  
25 every which way.

FARBER - CROSS

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1 Q In the public sector, specifically?

2 A Every way, yeah, public and private.

3 Q Now, if Lawson is enjoined -- well, let me back  
4 up. If ePlus was asked to immediately stop servicing  
5 any customers, would it feel like its reputation might  
6 be hurt for that particular customer?

7 A Repeat that question. I'm sorry.

8 Q If ePlus had a service contract with a customer  
9 but was asked to stop servicing that customer before  
10 that contract was up --

11 THE COURT: Because it had been found guilty  
12 of patent infringement?

13 MR. McDONALD: For any reason.

14 MR. ROBERTSON: Your Honor, I think that  
15 question is just irrelevant.

16 THE COURT: The answer is obvious. Of  
17 course, if you told them you have to stop doing  
18 something because you've been found responsible for  
19 patent infringement, you have to get out of the line,  
20 your reputation is going to take some hit.

21 BY MR. McDONALD:

22 Q If it turns out, Mr. Farber, that any injunction  
23 entered is undone, either on appeal or some later date  
24 because the patents are held invalid by the Patent  
25 Office or something, is ePlus going to compensate

FARBER - CROSS

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1 Lawson for any damage to Lawson from the injunction?

2 THE COURT: Sustained. That's it. Are you  
3 through?

4 MR. McDONALD: Yeah, I have no further  
5 questions. Thank you.

6 THE COURT: Do you have any questions?

7 MR. ROBERTSON: Very briefly, Your Honor.

8

9 REDIRECT EXAMINATION

10 BY MR. ROBERTSON:

11 Q Ariba is listed here on this supply chain  
12 management, correct?

13 A Yes.

14 Q They are in this electronic procurement space and  
15 they are a licensee, correct?

16 A Yes.

17 Q They were a licensee in 2009, correct?

18 A Yes.

19 Q Were they making profits in 2009 in this software?

20 A No.

21 Q Have they been in business for years?

22 A Since '98, I believe, or '97.

23 Q When is the first time they ever made profit?

24 A Just about 24 months ago, I think, they recorded  
25 their first profit.

FARBER - REDIRECT

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1 Q Amazon, you have familiar with that company?

2 A I am.

3 Q Was that in business for years before it ever  
4 achieved profitability?

5 A Many years.

6 Q How about AOL?

7 A Yes.

8 Q So you were asked this question about why the  
9 company is existing if it's no longer making a profit.  
10 Why does it exist and continue trying and selling if  
11 it's not making a profit presently?

12 A Because companies that don't make profits for many  
13 years, there's people behind those companies that  
14 belief in the product, the service, the technology  
15 that's being offered.

16 The vertical that they are involved in has been  
17 defined as a potentially a multibillion dollar market.  
18 Even today in procurement, just as an example, even  
19 though we talk about these numbers of percent of  
20 market, when you start to peel the onion back and look  
21 at the amount of people that have yet to purchase a  
22 procurement system or aren't using one, that market is  
23 much greater than those that have actually installed.

24 Q Do you think there are opportunities in the  
25 marketplace?

FARBER - REDIRECT

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1 A Tremendous opportunities.

2 Q Does your company exist only to enforce these  
3 patents?

4 A No, that's ridiculous.

5 Q The first patent issued in 2000. Does that ring  
6 familiar to you?

7 A Yes.

8 Q That was while you were still at ProcureNet,  
9 correct?

10 A I was.

11 Q Did the company exist for years before it started  
12 enforcing its patents?

13 A Yes, absolutely, a number of years.

14 Q On these implementation efforts to perhaps replace  
15 existing Lawson software, does ePlus ever partner with  
16 other companies to perform implementation?

17 A Yes.

18 Q Can you just give me a few examples of those?

19 A Of implementation partners?

20 Q Yes.

21 A J.V. Kelly, Accenture, Hitachi Consulting.

22 Q Did you retain any of those companies to assist  
23 you in replacing Lawson procurement software?

24 A Absolutely. They have hundreds, if not a thousand  
25 of people, that know the procurement space and can

FARBER - REDIRECT

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1 assist.

2 MR. ROBERTSON: All right. Thank you.

3 Nothing further.

4 THE COURT: If a company was being serviced  
5 by Lawson and wanted to go to Ariba or SAP or Oracle  
6 to get a replacement, it could do that, couldn't it?  
7 It wouldn't have to go to you?

8 THE WITNESS: That's correct.

9 THE COURT: All right. Okay. Thank you.

10 THE WITNESS: Thanks.

11 (The witness was excused from the witness  
12 stand.)

13 THE COURT: Do you have a witness?

14 MR. McDONALD: Yes, I do, Your Honor.

15 Lawson calls Dean Hager to the stand.

16

17 DEAN JOSEPH HAGER, called by the Defendant, first  
18 being duly sworn, testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. McDONALD:

22 Q Good afternoon, Mr. Hager.

23 A Hi.

24 Q Would you state your full name, please?

25 A Dean Joseph Hager.



HAGER - DIRECT

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1 Q Where do you live?

2 A Afton, Minnesota.

3 Q Where do you work?

4 A Lawson Software.

5 Q What's your current position with Lawson?

6 A I'm the executive vice president of S3 Industries.

7 Q How long have you had that position?

8 A For the past two years.

9 Q How long have you worked for Lawson?

10 A For the past 13 years. Since 1998.

11 THE COURT: How do you mean spell your last  
12 name, sir?

13 THE WITNESS: H-A-G-E-R.

14 Q What other positions have you held with Lawson in  
15 those 13 years?

16 A I have headed up the marketing organization. I've  
17 spent the bulk of the time heading up the development  
18 organization. I've run sales and services, and  
19 product management and strategy. Now I'm responsible  
20 for the business unit that make up what we call the S3  
21 Industries Group.

22 Q Before you began at Lawson 13 years ago, did you  
23 have other experience in the computer industry?

24 A I did. I was with IBM for just over nine years.

25 Q Generally, what did you do for them?

HAGER - DIRECT

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1 A I began fresh out of college as an operating  
2 systems programmer. Then after a few years worked  
3 into management and I was always on the management  
4 side of research and development.

5 Q Do you have a college degree?

6 A I do.

7 Q What degree is it?

8 A Bachelor of science in computer science and  
9 mathematics.

10 Q Within your S3 Industries entity, are there  
11 business units?

12 A There are.

13 Q How many are there?

14 A Four business units.

15 Q What are those units?

16 A Health care, public sector, services industries,  
17 and something we refer to as human capital  
18 management.

19 Q Why are you divided in to those four business  
20 units?

21 A Because each one of those businesses is a  
22 specialty business, and so it's led by somebody who  
23 understands that business very well and takes products  
24 to market that are specific to that industry.

25 Q So health care is a specialty?

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1 A Uh-huh.

2 Q Can you say yes or no?

3 A Yes. I'm sorry.

4 Q When you say health care is a specialty, what do  
5 you mean?

6 A I mean that Lawson strategically focuses on  
7 providing solutions to the health care industry. Some  
8 solutions are sold to multiple industries, but many of  
9 the solutions are sold specifically to health care to  
10 solve health care specific issues.

11 Q Is public sector also that type of a specialty?

12 A Correct.

13 Q What sort of entities are in the public sector  
14 division?

15 A We primarily focus on regional, on government,  
16 counties, cities. K through 12 education is actually  
17 our biggest subsegment of public sector and then also  
18 public authorities.

19 Q Do you have involvement with the process of  
20 selling products within the S3 Division?

21 A I do.

22 Q What type of involvement do you have with sales?

23 A I oversee the sales organization.

24 Q Do you have involvement in the final deals with  
25 sales?

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1 A I do.

2 Q What's your role with that?

3 A Again, I oversee the organization. I don't  
4 necessarily sign each contract with the customer.  
5 Depending on the level of authority and the size of  
6 the contract, I may have to sign it, but I oversee the  
7 organization that closes the deals.

8 Q Who do you report to?

9 A I report directly to our CEO, Harry Debes.

10 Q How many people report to you?

11 A Between 5- and 600.

12 Q I'd like to talk now about the S3 product line.

13 That's the line that has these RSS and Punchout  
14 products that you've heard the testimony about today,  
15 right?

16 A Correct.

17 Q Can you describe for me the S3 product line?

18 A There are three major components of the S3 product  
19 line; financial management, human capital management,  
20 and supply chain management. And RSS and Punchout are  
21 a subset of the supply chain managements.

22 Q You've heard the term ERP today?

23 A Correct.

24 Q What is your understanding as to what an ERP  
25 vendor would be?

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1 A ERP vendor, again, you heard from Mr. Farber, it  
2 stands for enterprise resource planning. Essentially,  
3 it's the major enterprise applications that are needed  
4 for that specific industry. It was a term that  
5 actually came out of manufacturing years ago but has  
6 now broadened across multiple industries, but  
7 typically is made up of those three major components  
8 that I just mentioned.

9 In some industries, there's other components that  
10 are added to it like in manufacturing. Manufacturing  
11 resource planning is another component of it, but that  
12 isn't something that our S3 product line does.

13 Q Who does Lawson sell its ERP product line to?

14 A Far and away the predominant industry that we sell  
15 to is to health care, followed by public sector as I  
16 defined earlier, and then a little bit to what we  
17 refer to as services industries, which is all  
18 industries other than health care and public sector as  
19 we've defined them.

20 Q All other service types of industries?

21 A Service type industries, yes.

22 Q Does Lawson ever sell its procurement products  
23 like RSS or Punchout as stand alone products?

24 A No.

25 Q Why not?

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1 A Because we don't consider our procurement solution  
2 to be what was referred to earlier as a best of breed  
3 procurement solution. That isn't a value proposition  
4 that carries with it.

5 We sell an integrated financial system with supply  
6 chain whenever we sell it. We virtually never sell  
7 procurement alone without Lawson financials that  
8 accompany it.

9 Q Could we put up the demonstrative?

10 THE COURT: You sell the integrated financial  
11 system without the RSS and Punchout?

12 THE WITNESS: Yes, we can.

13 BY MR. McDONALD:

14 Q Does that happen sometimes that customers will buy  
15 the financial without those?

16 A Often, yes.

17 Q We see up on the screen now, we've got the picture  
18 here. Can you explain what the blue part of the  
19 picture represents?

20 A That is a picture of what Lawson provides our  
21 solution set. The Lawson system foundation represents  
22 the technical architecture that all of our  
23 applications sit on top of. And then the lighter blue  
24 squares that are on top of the system foundation  
25 represent not a complete list, but a subset of the

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1 types of applications that we provide on top of our  
2 system foundation.

3 Q So going from left to right, can you describe that  
4 second level of boxes?

5 A HR stands for human resources. IC stands for  
6 inventory control. RQ is requisitions. PO is  
7 purchase order. And there's general ledger, accounts  
8 payable, accounts receivable. Then you'll see the  
9 requisition, of course, leads into RSS and Punchout.  
10 That's the only way that RSS and Punchout would be  
11 used is in conjunction with the Lawson requisition  
12 system.

13 THE COURT: Is the Lawson requisition system  
14 used in conjunction with the purchase order system?

15 THE WITNESS: It is, correct.

16 THE COURT: Is the purchase order requisition  
17 system used with the RSS and Punchout?

18 THE WITNESS: The interface between RSS and  
19 Punchout is through our requisition system.

20 THE COURT: I understand that, but do you use  
21 the purchase order system with those three?

22 THE WITNESS: Correct, yes.

23 THE COURT: How about the inventory control,  
24 do you use that with those three, too?

25 THE WITNESS: Correct. We typically deliver

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1 an integrated system.

2 BY MR. McDONALD:

3 Q Who do you view as your main competitors to your  
4 ERP product suite?

5 A Oracle is far and away our most significant  
6 competitor.

7 Q Are there any other competitors that are  
8 significant?

9 A Then it depends by industry. Our second most  
10 chief competitor in health care would be McKesson.  
11 Within the public sector, it would be Sun Guard and  
12 Tyler. Then in services industries, it's typically  
13 going to be best of breed financial providers like  
14 Epicor perhaps or Microsoft. SAP every once in awhile  
15 will come into that, but SAP actually because of their  
16 focus more on the manufacturing side of the business,  
17 we don't compete that much with SAP.

18 MR. McDONALD: Could we go to demonstrative  
19 2, please.

20 Q Do you see up on your screen, Mr. Hager, a pie  
21 chart regarding the 2009 market share?

22 A Yes.

23 Q What is your understanding as to what this chart  
24 represents?

25 A A Gartner report that I saw a little bit earlier



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1 on the screen of all the supply chain vendors that are  
2 in the marketplace. And this represents a pretty  
3 standard Gartner report that comes out with market  
4 share percentages.

5 Q Is Lawson reflected in the data?

6 A Yes. On No. 9, Lawson 1.46 percent of the market.

7 Q When you say "the market," what is your  
8 understanding as to what that market is?

9 A This specifically defines the supply chain  
10 management market, which in the report Gartner breaks  
11 out into supply chain planning, supply chain  
12 execution, procurement, and services delivery.

13 Q Is it your understanding that this particular  
14 chart comes from a specific subsegment that's related  
15 to procurement?

16 A It isn't labeled that way, so I was going to ask a  
17 clarifying question as there were two tables within  
18 that chart.

19 Q Do you want to see it?

20 A Looking at the vendors, it appears that it's from  
21 the procurement section. It's not labeled  
22 procurement. I didn't want to be presumptuous.

23 Q Do you see in the lower right corner this  
24 indicates a source of DX 424?

25 A Uh-huh.

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1 MR. McDONALD: Bill, could you put up 424 and  
2 see if you can blow that up?

3 A I can see it fine. And yes, then that would  
4 represent specifically the North American market and  
5 specifically the procurement subsegment of the supply  
6 chain management marketplace.

7 Q Do you see below subsegment, it indicates a  
8 particular country?

9 A Yes, the United States.

10 Q Is it your understanding that this data on the pie  
11 chart is from the 2009 data on this Exhibit 424?

12 A Yes. And the 1.46 that I see on the chart, that  
13 is below the share in 2009. It would be reflective of  
14 what was on the prior pie chart.

15 Q Thank you. You have reviewed this data before,  
16 right?

17 A I have seen this in preparation for today, yes.

18 Q Is ePlus listed anywhere in this summary by  
19 Gartner of the procurement U.S. market?

20 A No, they were not listed.

21 Q Had you ever heard of ePlus before this lawsuit?

22 A Never.

23 Q How long had you been involved in sales and  
24 marketing at Lawson, specifically S3, prior to May of  
25 '09 when this lawsuit was brought?

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1 A Since May 1998. So I've been there for 13 years.

2 So subtract that.

3 Q About 11 years?

4 A Yeah.

5 Q Have you come to learn a little bit about ePlus  
6 after the lawsuit was brought?

7 A I learned a lot today.

8 Q Is it your understanding ePlus is an ERP provider?

9 A No.

10 THE COURT: I don't need him to summarize  
11 what somebody else said, Mr. McDonald.

12 Q When you have customers that are seeking an ERP  
13 system, how is it that customers indicate that they  
14 are looking for an ERP system?

15 A It was actually much like what was described  
16 earlier by Mr. Farber. A customer will typically  
17 submit a request for a proposal and send it out to  
18 providers in the space that they are familiar with  
19 that perhaps they might have researched a little bit  
20 and believe they might have a solution that will fit  
21 their needs. And they'll typically send it out to  
22 nine or ten vendors.

23 Q You also have seen that best of breed report that  
24 I asked Mr. Farber about, correct?

25 A I have.

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1 Q Is Lawson in that best of breed report?

2 A No, we're not.

3 Q If a customer wants an eProcurement best of breed  
4 product, does Lawson try to get that business?

5 A No.

6 Q Why not?

7 A Again, it's not the market that we focus on. If a  
8 customer doesn't want an integrated financial package  
9 in conjunction with a procurement package, we won't  
10 compete for the business.

11 Q Does Lawson even offer its RSS or procurement  
12 Punchout products as a best of breed solution?

13 A No.

14 Q When you're selling to customers and you're  
15 selling RSS or Punchout, it's as part of the suite, do  
16 I understand that right?

17 A Correct.

18 Q Can you summarize for us what your sales pitch is  
19 as to why your customers should choose your system  
20 with RSS and Punchout?

21 A The value would be an integrated system. The  
22 financial accounting unit. You can drill from there  
23 or research deeper into the financial system to find  
24 out what was purchased. You can track that  
25 information over to the HR system and see the roles

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1 that people are in. The value is in the integration  
2 of the full suite, of all the suites.

3 Q Of those U.S. customers out there that already had  
4 ERP systems, do you have an understanding as to what  
5 percentage of those ERP systems in existence would be  
6 Lawson's systems?

7 A Of the worldwide marketplace --

8 THE COURT: The United States.

9 A In the United States, specifically? In the United  
10 States marketplace, Lawson's ERP market share is about  
11 2 percent.

12 Q So with respect to those other 98 percent that  
13 have ERP systems that aren't from Lawson, if they want  
14 a procurement system, is that market open to ePlus?

15 A Certainly.

16 Q Is that any market that Lawson's RSS or Punchout  
17 products would have any effect on?

18 A If all they want is a procurement system, it isn't  
19 a business that we would compete for.

20 THE COURT: Are you saying that people come  
21 to you mostly to buy things other than your RSS and  
22 Punchout through the requisition system; is that  
23 right?

24 THE WITNESS: Correct. The primary reason  
25 they are coming for us is getting automated financials

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1 integrated with a purchasing system, and the RSS and  
2 Punchout are add-on modules on top of those systems.

3 THE COURT: It's just cream on the top of the  
4 cake?

5 THE WITNESS: Correct.

6 THE COURT: Icing, right?

7 THE WITNESS: Icing on the cake, yes.

8 THE COURT: Would most of them buy your  
9 financial system without the RSS and the Punchout on  
10 top of the RQ system if you went out of business and  
11 quit selling that product entirely because you didn't  
12 think it was very profitable?

13 THE WITNESS: I didn't quite catch that  
14 question. I'm sorry.

15 THE COURT: Would most people buy what you're  
16 selling without the RQ and the RSS and the Punchout if  
17 for some reason you decide to quit selling that  
18 component of your ERP?

19 THE WITNESS: Most of our sales do not  
20 involve our requisition self service or Punchout.  
21 It's in a subset of the sales.

22 THE COURT: The answer is you'd still be  
23 selling your systems?

24 THE WITNESS: We'd still be selling our  
25 systems.

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1 THE COURT: Okay. Thank you.

2 BY MR. McDONALD:

3 Q Now, is there a part of the marketplace that  
4 doesn't have an ERP suite of products and doesn't want  
5 an ERP suite of products?

6 A Correct. There's a part of the market that, for  
7 whatever reason, doesn't want to implement an ERP  
8 system.

9 Q If that part of the market just wanted a  
10 procurement system or eProcurement system all by  
11 itself, is it your understanding that would be open to  
12 ePlus?

13 A Certainly, yes.

14 Q Is that a part of the market that Lawson competes  
15 for?

16 A No.

17 Q So does that leave us that part of the market that  
18 has ERP product, and then that 2 percent that is a  
19 Lawson ERP, can we talk about that piece of that piece  
20 for a moment now?

21 A So just Lawson customers?

22 Q Yes.

23 A Okay.

24 Q In that specific segment, how much do Lawson and  
25 ePlus compete?

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1 A I've never come across an occasion where we have  
2 ever competed with ePlus.

3 Q Based on your experience, why is that?

4 A Again, it would only be within the Lawson customer  
5 base. First of all, only a subset of the Lawson  
6 customer base has our supply chain products, many of  
7 them have our human resources or our financial  
8 products.

9 And if a customer is deciding that they want to  
10 extend their financial products into supply chain,  
11 quite often they just -- it's a noncompetitive  
12 engagement. They decide to purchase Lawson's  
13 materials management purchasing system. And in some  
14 cases we'll extend that to requisition self service,  
15 but it's typically just coming back to us as their  
16 provider of choice, and they don't go to RFP for that  
17 particular functionality.

18 Q You threw out noncompetitive and RFP. I just want  
19 to make sure we're clear. When you say that's  
20 noncompetitive, what do you mean?

21 A Meaning sometime earlier in our relationship with  
22 that customer, they selected that they wanted Lawson  
23 to be their enterprise provider of choice of their  
24 financial applications and perhaps human resources  
25 applications.



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1        So a lot of times, similar to what was described  
2        earlier, actually is a customer will say, I've already  
3        chosen to do business with this vendor. So,  
4        therefore, anything that I'm going to buy in the  
5        future, I'll first see whether that vendor provides  
6        it. And if they do, I'll simply take it from that  
7        vendor as opposed to going to RFP to multiple vendors  
8        for that functionality.

9        Q    Are there situations where your Lawson customers  
10       that don't have an eProcurement product, they will go  
11       look for a best of breed eProcurement product?

12       A    Yes, that does happen occasionally.

13       Q    What circumstances will that happen in?

14       A    The exact circumstances you described. If the  
15       customer requires a very robust eProcurement system  
16       with robust cataloging and interfacing with various  
17       different suppliers, there are vendors out there that  
18       specializes in that. That isn't something clearly  
19       that Lawson specializes in. And so sometimes they'll  
20       go RFP for a specialized eProcurement system.

21       Q    In that situation, are they including Lawson  
22       within the RFP or are they just looking at the best of  
23       breeds?

24       A    Because we're their supplier of choice, they will  
25       usually come back to us with a list of requirements

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1 that they have and ask us whether we could meet them.  
2 And if it is pretty substantial eProcurement  
3 requirements, we'll typically say that we don't meet  
4 them, and they'll go and RFP for other providers.

5 THE COURT: You say you have 800 customers  
6 that use RQ, RSS and Punchout?

7 THE WITNESS: Just over 800 have purchased  
8 it. I can't validate that they all use it.

9 THE COURT: Why would they purchase it if  
10 they weren't going to use it?

11 THE WITNESS: In ERP, and this is fairly  
12 standard in the industry, you'll buy an integrated  
13 system that has a lot of products in it, but you don't  
14 necessarily use every piece.

15 THE COURT: Like I have a Bose system in my  
16 Jeep, and I've never put all the CDs back in the back.

17 THE WITNESS: Exactly, right.

18 THE COURT: Okay. I see. I'm sorry to  
19 interrupt. Go ahead.

20 MR. McDONALD: Your Honor, just if I can  
21 verify, I think that list of 800 was RSS customers. I  
22 think the Punchout list was actually separate and is a  
23 lot shorter.

24 THE COURT: How many were Punchout customers?

25 THE WITNESS: I don't know off the top of my

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1 head, but it's a subset of the 800. It's not additive  
2 to the 800 because Punchout is not a useful product  
3 unless you also have RSS.

4 THE COURT: Yes, that's what I thought.

5 BY MR. McDONALD:

6 Q You're familiar with who these best of breed  
7 providers are in eProcurement based on your experience  
8 in the marketplace; is that right?

9 A A few of them, yes.

10 Q Who are the main best of breed eProcurement  
11 providers?

12 A The most famous is Ariba, of course, and the other  
13 one I'm probably familiar with was mentioned earlier,  
14 and that Scquest.

15 Q I think we just heard from Mr. Farber's testimony  
16 about how Ariba hasn't made money in this industry.  
17 Do you recall something to that effect?

18 A Yeah.

19 THE COURT: No, he didn't say that. He  
20 didn't say they haven't made money.

21 MR. McDONALD: Can you remind me what he  
22 said, Your Honor?

23 THE COURT: My understanding of what he said  
24 is it took them a long time to make a profit. It's a  
25 far different cry between whether you make money and

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1 whether you make a profit. And if you equate making a  
2 profit with making money, what he didn't say was that  
3 they never made a profit. It was that it took them a  
4 long time to get to the point of profitability.

5 MR. McDONALD: Thank you.

6 THE COURT: I think he quantified the  
7 approximate number of years, but I don't remember.

8 Q Do you have some understanding of why Ariba would  
9 have stayed in the marketplace that long not having  
10 made money?

11 A Yes.

12 Q What is your understanding?

13 A My understanding was that they were growing  
14 substantially. It was a growth business for Ariba, as  
15 it was the other vendors that were mentioned as well,  
16 Amazon and such. They were all rapidly growing  
17 software providers, and that's why the patience on not  
18 being profitable, they figured the growth would get  
19 them there.

20 Q You have seen the ePlus sales data today since  
21 2002. Is ePlus on a growth path?

22 A It doesn't appear so.

23 MR. ROBERTSON: This witness is now going to  
24 characterize ePlus' documents.

25 THE COURT: What is the nature of that

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1 objection? Can you put that into something I can rule  
2 on?

3 MR. ROBERTSON: Lack of foundation, Your  
4 Honor.

5 THE COURT: Lack of foundation. Sustained.

6 BY MR. McDONALD:

7 Q How is it you that personally know who the  
8 competitors are in the eProcurement space for this  
9 slice of the pie that has Lawson's ERP systems already  
10 that might be looking for procurement?

11 A Typically, our customers will tell us we're  
12 working with them in a competitive engagement.

13 Q Are you personally involved in the sales process  
14 with customers yourself?

15 A Yes.

16 Q Let's talk about the process. Could we put up  
17 demonstrative No. 3, please.

18 Mr. Hager, you helped prepare this Exhibit 3,  
19 correct?

20 A Correct.

21 Q Can you kind of explain to us what you're trying  
22 to depict here with this exhibit?

23 A This is a classic what is called a sales funnel.  
24 At the very bottom is the final selected vendor. At  
25 the very top are all the potential competitors. The

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1 way the stages work is at the very top is everybody  
2 that would consider themselves to be in that  
3 marketplace.

4 So in the supply chain procurement marketplace,  
5 all those blue dots at the top would be those vendors  
6 that were on that report we saw. Those 80-some  
7 vendors.

8 Q That's the one that we saw with the pie chart with  
9 up to 50 competitive companies?

10 A Correct. And then what generally occurs, as I  
11 mentioned at the beginning of the testimony, is that  
12 the customer, the prospective customer, will decide  
13 who of that entire ecosystem of software providers may  
14 have the potential of meeting their specific needs,  
15 and they'll submit a request for proposal out to all  
16 of those nine or ten of them, and those vendors will  
17 choose to participate in that RFP process. That's the  
18 next layer of blue balls there.

19 Q The second layer on the chart --

20 THE COURT: Mr. McDonald, we went through  
21 most of this at the trial.

22 MR. McDONALD: I don't think we did.

23 THE COURT: They said there was a big group  
24 of people from whom they could pick. They would do an  
25 RFP. Some people would not respond. Some people

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1 would. And they would evaluate whoever responded.  
2 Then they would select, sometimes by way of interview  
3 and sometimes by way of just looking at the paper, who  
4 is it that got the bid. This really was all  
5 established at the trial.

6 BY MR. McDONALD:

7 Q Mr. Hager, where in your opinion does the  
8 competition actually occur as part of that sales  
9 process that you have got depicted here?

10 A On all of our documentation where we list our  
11 competitors and list wins and losses against them.  
12 It's at that first row of red balls where you have the  
13 four red balls. That's where the list of finalists  
14 are, and that's where you really have the head to head  
15 competition that exists.

16 Q Is that sometimes called the short list?

17 A That's sometimes called the short list, yes.

18 Q Has Lawson in your experience with the S3 products  
19 ever been head-to-head with ePlus at that short list  
20 stage?

21 A In all of the win-loss reports that I've ever  
22 looked at, I've never seen ePlus on the list as a  
23 competitor against Lawson at that stage.

24 Q At that stage do you know who your competition is?

25 A Almost always.

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1 Q How is that?

2 A Typically, the customer will tell us, but it's a  
3 small industry. Usually one group might be out in the  
4 hallway waiting to do a product demonstration while  
5 the other group is in the conference room. Everybody  
6 knows each other.

7 Q Now, at that short list point, how often are you  
8 encountering best of breed providers in the  
9 procurement space at that stage?

10 A Typically, very, very rare.

11 Q Why would that be?

12 A Again, it's not something we typically compete  
13 for.

14 Q So who are you up against typically in that short  
15 list stage?

16 A As I mentioned earlier, Oracle is by far the No. 1  
17 across all industries, and then it varies by industry  
18 as I mentioned earlier.

19 Q Did you see there were some charts used with Mr.  
20 Farber that had the pie of -- I think there were 7,000  
21 and some prospects of Lawson, and then a section of  
22 those who were also on ePlus' prospect list. Do you  
23 remember seeing that?

24 A Was that shown today? I don't remember it.

25 Q You saw that, a paper version --



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1 THE COURT: You saw it when you were getting  
2 ready because it wasn't shown today.

3 Q I think they did use the --

4 MR. McDONALD: Do you want me to continue,  
5 Your Honor?

6 THE COURT: Go ahead.

7 Q I think we did see and you did see the one with  
8 the 800 RSS customers, and there was a portion of that  
9 section that was ePlus or was that not used?

10 A I don't think any of those charts were shown  
11 today.

12 THE COURT: Was I asleep?

13 MR. McDONALD: I saw them yesterday.

14 THE COURT: You're entitled to recuse me if I  
15 was asleep.

16 I don't understand either of those. There  
17 was testimony about the 800. There was testimony  
18 about some of the other, but it wasn't even as  
19 specific as you were describing the charts. So let's  
20 go on.

21 BY MR. McDONALD:

22 Q When you hear discussion of prospects, Mr. Hager,  
23 where do you look at that in terms of your graphic can  
24 here in the selection process?

25 A I'm sorry. I don't understand the question.

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1 Q When you're talking about something just being a  
2 prospect for a company like Lawson, this is a prospect  
3 for me that maybe I can sell to, which level of the  
4 dots would that be at?

5 A It typically -- this chart doesn't exactly depict  
6 it, but --

7 THE COURT: This doesn't depict it at all  
8 because this is depicting the people that are doing  
9 the selling, and the list of prospects are the people  
10 who are doing the buying, as I understood the  
11 testimony.

12 MR. McDONALD: Fair enough.

13 THE COURT: This chart doesn't have anything  
14 to do with that. I am awake.

15 BY MR. McDONALD:

16 Q If that customer is on Lawson's prospect list, Mr.  
17 Hager, would that mean they are generally at the top  
18 level of this chart or would they be at some other  
19 place on it?

20 A If somebody is on a prospect list, that is  
21 pre-RFP. So if you did want to follow through this,  
22 it would be at the top level because that second level  
23 is when you have already responded to an RFP. They  
24 are beyond being a prospect at that point.

25 THE COURT: Mr. McDonald, what the testimony

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1 was had to do with who they considered to be potential  
2 people they sold to. That's their prospects. This is  
3 the people who were doing the selling, right? The  
4 blue.

5 MR. McDONALD: Right.

6 THE COURT: Then you get down to the ultimate  
7 seller. So this chart doesn't bear on that part of  
8 the testimony at all.

9 If your question was if you looked at who the  
10 buyer was going to consider as potential vendors, then  
11 that's what the top level of that chart relates to,  
12 that's what he described when he first described it,  
13 but let's go on.

14 Get this chart off and go with something  
15 else. It's outlived its usefulness.

16 BY MR. McDONALD:

17 Q Let's talk about the specific customers now that  
18 Mr. Farber had talked about. Did you hear him mention  
19 PPD or pharmaceutical product development?

20 A I did, yes.

21 Q Are you familiar with Lawson's relationship with  
22 PPD?

23 A In preparation for today, yes.

24 Q Is PPD a Lawson customer?

25 A They are.

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1 Q About how long have they been a Lawson customer?

2 A Since, I believe, 1994.

3 Q Did PPD ever license RSS?

4 A No.

5 Q Did they ever license Punchout?

6 A No.

7 Q They had other products of Lawson?

8 A Yes, financials and purchasing products.

9 MR. McDONALD: I'm trying to get my list of  
10 which companies were mentioned here during Mr.  
11 Farber's questioning, Your Honor. So I hope I'm going  
12 to hit it correctly.

13 Q Sterling. That was another one that was  
14 mentioned, correct?

15 A Yes.

16 Q Did you also review the situation as to Sterling?

17 A No, I actually haven't, but I'm familiar with them  
18 as a customer.

19 Q What is your understanding as to what, if any,  
20 products of Lawson's Sterling has?

21 A Sterling has been a longtime Lawson human  
22 resources customer.

23 Q Do they have RSS?

24 A No, not to my knowledge.

25 Q Do they have Punchout?

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1 A No.

2 Q When you say they are a longtime customer, about  
3 how long approximately is that?

4 A I think they predate me as a Lawson customer. I  
5 can't remember how many years prior to me joining.

6 Q Do you recall -- I'm checking my notes here and  
7 I'm afraid I can't read my own handwriting. Do you  
8 remember what other customers Mr. Farber mentioned  
9 during his examination?

10 A There was -- I don't know.

11 Q I got a little help here. How about Wolters  
12 Kluwer? Are you familiar with that one?

13 A No, I'm not.

14 Q Blue Cross/Blue Shield of North Carolina?

15 A I'm a bit familiar with them.

16 Q Are they a Lawson customer?

17 A They are, yes.

18 Q When did they became a Lawson customer?

19 A I believe in the late '90s.

20 Q Do you have an understanding as to whether or not  
21 they have the Punchout product?

22 A I don't believe they do.

23 Q Did they ever have the RSS product?

24 A I'm not entirely sure.

25 Q I've got some notes here that indicate they may

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1 have had that since the 1990s. Does that sound right?

2 A Yes, it could be.

3 Q At any point did Lawson compete with ePlus for  
4 Blue Cross/Blue Shield's business?

5 A Not to my knowledge.

6 Q Has Lawson taken any sales from ePlus as a result  
7 of either RSS or Punchout?

8 A I'm unaware of a single one.

9 Q Deaconess, I think that was also mentioned. Does  
10 that ring a bell?

11 A Yes, that does.

12 Q Do you have some knowledge of the Deaconess  
13 relationship with Lawson?

14 A In preparation for today, yes.

15 Q Is Lawson a vendor for Deaconess?

16 A Yes.

17 Q Approximately, how long has Deaconess been a  
18 Lawson customer?

19 A Since the late '90s.

20 Q What products did Deaconess license from Lawson?

21 A Initially, financials.

22 Q Did they have a procurement product at some point?

23 A Not Lawson initially. Initially, who they used  
24 was, along with our financials, they used McKesson's  
25 materials management. It was known as the Map Con

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1 product.

2 Q At some point did something happened to that Map  
3 Con product at Deaconess?

4 A McKesson decommissioned, which means an  
5 announcement that they are not going to support it  
6 anymore, so they decommissioned that product, and  
7 McKesson came to us and asked us to bid with our  
8 materials management system.

9 THE COURT: Deaconess did or McKesson did?

10 THE WITNESS: Deaconess did.

11 Q The customer?

12 A Yes.

13 THE COURT: Do they have RSS and Punchout?

14 Q They don't have Punchout, do they?

15 A I don't believe that they have Punchout, but along  
16 with the materials management system they did purchase  
17 RSS along with that.

18 Q Did Lawson ever compete head-to-head with ePlus at  
19 Deaconess?

20 A Not to my knowledge?

21 THE COURT: Did the guy from Deaconess say  
22 they did?

23 THE WITNESS: No.

24 THE COURT: I think he did. Maybe I'm wrong.

25 MR. McDONALD: No. The timing was different.

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1 THE COURT: He didn't want it. He didn't  
2 like it.

3 MR. McDONALD: But they weren't head-to-head  
4 competition.

5 THE COURT: I remembered the testimony  
6 differently. It depends on how you define  
7 head-to-head, I guess.

8 Do you know anything about Fortress or  
9 Haynes?

10 THE WITNESS: I'm sorry?

11 THE COURT: Do you know anything about  
12 Fortress or Haynes?

13 THE WITNESS: I don't.

14 THE COURT: Okay. So he doesn't know about  
15 those. LAC Group?

16 THE WITNESS: I know of them as a customer,  
17 but the specifics of when they bought it and exactly  
18 what they bought, I don't know.

19 THE COURT: Okay. That pretty much takes  
20 care of it.

21 MR. McDONALD: Yes.

22 BY MR. McDONALD:

23 Q Let's talk about the harm that would arise now if  
24 the Court entered an injunction. Well, actually, I  
25 need to back up for a second, I think.



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1 We'll provide some supplementation on these issues  
2 to fill in the gap based on the records.

3 I have a note here indicating actually Deaconess  
4 does have the Punchout product. I thought my notes  
5 indicated that they didn't, so I'll double check that,  
6 but I don't want to leave the record where it is.

7 THE COURT: I'm pretty sure the guy at the  
8 trial said they did.

9 MR. McDONALD: Okay. I also have a note here  
10 indicating that Haynes is not a Lawson customer.

11 THE COURT: He doesn't know, though. So you  
12 can't testify unless you want to get on the stand.

13 MR. McDONALD: No, I'm happy where I am.

14 THE COURT: You don't want Mr. Robertson to  
15 ask you questions? Let's go.

16 BY MR. McDONALD:

17 Q With respect to the harm from an injunction,  
18 Mr. Hager, have you had a chance to consider that  
19 issue with respect to Lawson and its customers?

20 A I have, yes.

21 Q Let's talk a bit about the issue of if there's an  
22 injunction against servicing existing Lawson RSS or  
23 Punchout customers. What type of services does Lawson  
24 provide to those customers right now?

25 A Well, during the implementation phases we'd

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1 provide implementation services, but then for the  
2 lifetime of the client we predominantly provide the  
3 support services; call in support, help desk.

4 We also provide ongoing regulatory releases and  
5 fixes, patches, updates to make sure that the software  
6 works with the latest databases and web browsers and  
7 those types of things.

8 Q You mentioned a regulatory release. Can you  
9 explain what that is?

10 A Every year Lawson puts out end of year releases  
11 just to make sure that we are abiding by whatever the  
12 law of the land is for that particular year.

13 The primary reason for regular releases around RSS  
14 and Punchout specifically has more to do with other  
15 refresh technology that's out there.

16 You mentioned it in your opening that if Google  
17 were to come out with a new web browser or if  
18 Microsoft were to come out with a new web browser, you  
19 need to make sure that your stuff works on that web  
20 browser, and if it doesn't, it literally could break  
21 everybody that uses the system.

22 Q How important are those types of services to the  
23 operation of your customers' systems?

24 A Without those services, the customer runs at  
25 substantial risk.

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1 Q Are those services critical or not?

2 A I would consider them critical. I think our  
3 customers would as well.

4 I will tell you that since the announcement around  
5 this ePlus Lawson connection here, the No. 1 concern  
6 I've been hearing from our customers --

7 MR. ROBERTSON: Objection, Your Honor.

8 THE COURT: Wait a minute. Don't say  
9 anything else.

10 MR. ROBERTSON: Hearsay, Your Honor.  
11 Hearsay. He's about to testify as to what he's heard  
12 from others.

13 THE COURT: Okay. I got that one.

14 MR. ROBERTSON: Okay.

15 THE COURT: Okay.

16 MR. McDONALD: I think he's hearing some  
17 concerns from the customers, Your Honor.

18 THE COURT: That's hearsay, and you're  
19 offering it for the truth of the matter unless you  
20 have a nonhearsay purpose. Do you?

21 MR. McDONALD: No. We're offering it that  
22 way. I just thought that in the context of a hearing  
23 like this, it would be something --

24 THE COURT: Rules of evidence are still in  
25 play. Sustained. As long as anybody invokes them,

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1 the rules are in play.

2 BY MR. McDONALD:

3 Q Now, if Lawson cannot provide these services to  
4 the customer who encounters a problem, does that mean  
5 the customer can't use the system anymore or what?

6 A If they run into a problem that causes the  
7 business process not to work and Lawson is unable to  
8 support that customer, yes, they will have a problem.  
9 They will be unable to run.

10 Q Are there any companies other than Lawson that  
11 currently provide support services for Lawson's RSS  
12 and Punchout products?

13 A No.

14 Q Is there a reason why there aren't any other  
15 companies doing that?

16 A We have the source code and we don't provide the  
17 source code to anyone else.

18 Q If Lawson were enjoined from servicing its  
19 existing RSS and Punchout customers, how would that  
20 work?

21 A There would be an announcement to our customers  
22 saying that Lawson would no longer support them, and  
23 that they would be running at risk, and everybody that  
24 would be running that system would immediately need to  
25 be making plans on how they would run in a less risky

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1 environment.

2 Q Does Lawson have contracts with customers who have  
3 the RSS and Punchout products to provide maintenance  
4 services?

5 A We do.

6 Q About how many of those contracts do you have, do  
7 you know?

8 A We would have a maintenance contract with every  
9 customer that is listed as an RSS customer.

10 THE COURT: How many is that? Is that the  
11 800?

12 THE WITNESS: That's the 800, yes.

13 MR. McDONALD: And so smaller number for  
14 Punchout, but I don't think we have that number right  
15 at our fingertips.

16 BY MR. McDONALD:

17 Q You heard Mr. Farber talking a little bit about  
18 how much effort would be involved with somebody else  
19 coming in stepping in and in effect taking over a  
20 particular functionality.

21 Can you walk us through -- please focus  
22 specifically on your biggest industry sector, health  
23 care. What would be involved if a customer in that  
24 area had to look for an alternative vendor for an RSS  
25 or Punchout product if the servicing of those products

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1 was enjoined?

2 A There would be a couple of things that actually  
3 are a little bit different from our customer set than  
4 some of the things we heard this morning. First of  
5 all, Lawson was categorized as a mid market vendor  
6 this morning. And our presence in health care is  
7 actually at the top end of the market.

8 Eight of the top ten health care providers in the  
9 country run Lawson. Over 60 percent of the top 50  
10 hospitals in the country run Lawson.

11 So we're not talking about simple implementations.  
12 We're talking about very complex, highly regulated  
13 implementation where you're not purchasing chairs and  
14 pens, but rather sophisticated medical equipment and  
15 supplies for surgeries.

16 So the purchasing system our hospitals consider to  
17 be mission critical to the care that they provide  
18 their patients. Roughly 70 to 80 percent of all of  
19 the hospitals' purchases are run through our system.

20 That is in contrast to what I heard this morning  
21 about 40 percent of purchases running through a  
22 system.

23 Typically, for most of our hospitals, the only  
24 purchases that don't run through the Lawson system are  
25 pharmaceuticals. All other medical supplies and care

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1 instruments are purchased through the Lawson system.  
2 So it does equate to about 70 to 80 percent. It's  
3 typically on the high end. We're talking about  
4 customers that have hundreds of hospitals that do  
5 requisitions at all of those hospitals.

6 So the number of users and the very complex  
7 approval processes, if you can appreciate that you can  
8 purchase both paper clips and MRI machines through our  
9 system, you can imagine that the very complex web of  
10 approval processes is quite different.

11 So you need to map those all to the roles that are  
12 within a hospital. The implementation time would be  
13 substantially greater than anything that we heard this  
14 morning to replace that system. Even just the RSS  
15 piece because all of the work flow approvals are  
16 triggered off of that initial RSS.

17 Q Is it your understanding from hearing Mr. Farber's  
18 testimony, did you hear anything there that indicated  
19 that ePlus had any significant experience with  
20 procurement systems for those critical supplies for  
21 hospitals?

22 MR. ROBERTSON: I object to lack of  
23 foundation and also commenting on the other witness'  
24 testimony. That's not what he said.

25 MR. McDONALD: I guess I'm trying to clarify

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1 why they are giving kind of a different version of  
2 what's going on here maybe trying to help the Court  
3 reconcile his testimony.

4 THE COURT: That still doesn't make it  
5 relevant and admissible. Sustained.

6 Are you saying that -- do you think that  
7 these hospitals that are your customers are ordering  
8 things while the surgery is going on?

9 THE WITNESS: No.

10 THE COURT: They are not, are they?

11 THE WITNESS: No, but they need to be in  
12 stock.

13 THE COURT: Of course they do, but they know  
14 how to make them and find out what they've got in  
15 stock before they operate on somebody, right?

16 THE WITNESS: Provided you have a good  
17 integrated inventory management system, yes.

18 THE COURT: Well, if you need an artificial  
19 heart, you go check and see if you have an artificial  
20 heart. You don't use your system to do it, do you?

21 THE WITNESS: Not to actually buy the  
22 artificial heart, no.

23 THE COURT: If you have the screws that are  
24 going into my back when I have back surgery, they are  
25 going to go look at that right before they let me in



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1 the hospital, aren't they?

2 THE WITNESS: Right, and Lawson systems are  
3 going to make sure that they are already in stock for  
4 you.

5 THE COURT: The way you're going to find out  
6 if they are there is you're going to eyeball them if  
7 you're the doctor or the nurse, right?

8 THE WITNESS: In a smaller community  
9 hospital, but we're talking about --

10 THE COURT: How about the Medical College of  
11 Virginia, do you know how they do it?

12 THE WITNESS: They are going to do it on a  
13 systems base. They will have ultimately somebody go  
14 in with a barcode machine and do inventory counts and  
15 load those into the inventory system.

16 THE COURT: The day or the week before the  
17 surgery and reserve them.

18 THE WITNESS: The buying doesn't occur at  
19 that level.

20 THE COURT: I'm not talking about the buying.  
21 I'm talking about whether they have them or not.  
22 You're not talking about the use of the product in the  
23 surgery. You're talking about whether you have an  
24 adequate stock of it if you need it down the road for  
25 the surgery, right?

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1 THE WITNESS: Correct.

2 THE COURT: Okay. That's fine.

3 THE WITNESS: But you need to carry the right  
4 amount of stock, not overstock or understock,  
5 otherwise you add far more cost to the health care  
6 system than already exists.

7 THE COURT: That's hard to do.

8 THE WITNESS: It's very hard to do.

9 BY MR. McDONALD:

10 Q So with respect to tracking, Mr. Hager --

11 THE COURT: I just think you're overblowing  
12 it. You need to be accurate in what you're saying,  
13 and it's important to know what actually takes place  
14 as opposed to the inflated view of things that takes  
15 place. And if you sell an inflated view that I can't  
16 buy, I'm just going reject the testimony in its  
17 entirety because you let him get on the witness stand  
18 and suggest that they can't conduct an operation  
19 without this system and that the whole place will shut  
20 down in the middle of an operation without this  
21 system, and that isn't what's at stake here.

22 And if that's the way you're going to try to  
23 sell the issue, then what I'm going to do is say I  
24 just don't buy any of it. And that's the risk you run  
25 from overstating your case.

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1           So try to confine it to what actually  
2 happens. That's what's important anyway. And that's  
3 really what he knows most about, I would assume.

4           MR. McDONALD: Fair enough.

5 BY MR. McDONALD:

6 Q Can we talk, Mr. Hager, about the tracking that  
7 your system does for those medical supplies for  
8 operations? Can you walk us through how the Lawson  
9 system is used to track, for example, the supplies  
10 that are used for surgery in a hospital?

11 A Again, at the beginning of the process is the  
12 inventory management and inventory counting that is  
13 done. And that all gets loaded up into the system  
14 where somebody looks at the system and determines in  
15 what hospitals they need to have which materials  
16 purchased, so that they have the adequate in stock  
17 equipment.

18           And then they run those through the purchase and  
19 were able to follow it through the process to the  
20 loading dock, to the invoice matching, and ultimately  
21 follow that device all the way into the operating  
22 room.

23 Q So your system actually tracks the inventory used  
24 in surgery all the way into the operating room?

25 A Correct.

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1 Q You indicated the amount of time it would take to  
2 go to an alternative system. Do you have an estimate  
3 as to how long it would take a customer to actually  
4 select and verify and implement a system that would  
5 replace the Lawson eProcurement functionality?

6 A It's entirely up to the customer as to how long it  
7 would take to select, but from an implementation  
8 perspective knowing how complex those implementations  
9 are, and I don't believe it's overstating it to say it  
10 would be nine months probably on average.

11 Q Is that within the range Mr. Farber provided  
12 today?

13 A He provided 30 days to six months to potentially  
14 longer. Because of the very complex health care  
15 organization we run, I believe it would fall in the  
16 typically longer.

17 I do say that with some level of expertise. We  
18 have 277 requisition self service health care only  
19 customers that represent 2500 different hospitals,  
20 which is about a third of the hospitals in the United  
21 States. We do have a lot of experience.

22 THE COURT: You have a lot of business and  
23 you have a lot of infringement, according to the jury.  
24 So the question I have to deal with is how to deal  
25 with it.

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1 THE WITNESS: I understand.

2 THE COURT: Now, if you're shut down and a  
3 government agency comes in and finds that you're  
4 committing fraud and shuts down all your operations to  
5 do a search and seizure, how is somebody, for example,  
6 who's using your system going to operate? Do you know  
7 that?

8 THE WITNESS: On day one, they would simply  
9 operate at risk.

10 THE COURT: They would find a way is what  
11 would happen.

12 THE WITNESS: For money, yes, they would.

13 THE COURT: Of course, it would. Of course,  
14 it would.

15 Now, suppose that we had a terrible  
16 catastrophe that wiped out where you have most of your  
17 support system. Are the hospitals going to be able to  
18 find somebody to help them straighten out and track  
19 what's going on and be able to provide surgeries to  
20 people; yes or no?

21 THE WITNESS: There's always a way.

22 THE COURT: There's a way. The question is:  
23 How much, right?

24 THE WITNESS: Correct.

25 THE COURT: And how much inconvenience?

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1 THE WITNESS: Correct.

2 THE COURT: Okay. That's the way you  
3 circumscribe the issue, not try to convince somebody  
4 that it's just going to all stop, the world is going  
5 to stop, because it's not going to stop.

6 Is it going to be costly? Yes. Is it going  
7 to be a problem? Yes. Is it some risk? Yes.

8 That's what the balancing in this case has to  
9 deal with. Not overselling. Don't oversell the  
10 product. The risk is the hearer just says that's just  
11 more puffery and I'm not going to pay anymore  
12 attention to it. It's serious enough the way it is.

13 BY MR. McDONALD:

14 Q With respect to the support service Lawson  
15 provides for these RSS and Punchout customers, Lawson,  
16 do they actually generate purchase orders when they  
17 are servicing customers?

18 A I'm sorry. I didn't understand.

19 Q Does Lawson itself actually generate purchase  
20 orders for supplies when they're servicing customers  
21 or is it more a matter of just solving the problem  
22 from a software or technical standpoint?

23 A When you say --

24 THE COURT: Hold on.

25 MR. ROBERTSON: It's vague and ambiguous.

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1 THE COURT: Yes.

2 You're talking about in the support role.

3 MR. McDONALD: Right.

4 THE COURT: But some of their systems do  
5 generate purchase orders. We know that. I think you  
6 confused him.

7 MR. McDONALD: I think I confused everybody.

8 THE COURT: So the support system, is that  
9 what you're talking about?

10 MR. McDONALD: Yes.

11 Q When Lawson provides that support, when somebody  
12 calls in and says I have a problem with RSS, when  
13 you're solving that problem, you don't actually  
14 generate requisitions or purchase orders and things  
15 like that yourself, do you?

16 A No.

17 Q If your hospital and other customers of RSS and  
18 Punchout are looking for an alternative suppliers, is  
19 it likely that they'd go to ePlus?

20 MR. ROBERTSON: Objection. Calls for  
21 speculation, Your Honor.

22 THE COURT: I think it calls for an opinion,  
23 and it may be even as an expert opinion on the market,  
24 but actually it can also qualify as a lay opinion  
25 based on his perception and knowledge of the market,

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1 which he, I think, testified sufficiently to that it  
2 would come in as a lay opinion, and I'll accept it as  
3 that. Overruled.

4 THE WITNESS: Could you repeat the question?

5 Q Sure. If your customers of RSS and Punchout had  
6 to stop using your products and look at another vendor  
7 for similar functionality, based on your knowledge of  
8 the marketplace, how likely are they going to pick  
9 ePlus?

10 A I think it would be unlikely.

11 Q Why is that?

12 A Because I don't think they, from what I'm able to  
13 see, have a lot of experience in health care and would  
14 have the references to provide to the customers that  
15 would be looking for a solution.

16 There are a lot of other solution providers out  
17 there to choose from.

18 THE COURT: Like Oracle and Ariba and SAP and  
19 whoever else?

20 THE WITNESS: Correct.

21 Q Do they have experience specifically within the  
22 health care industry, those other vendors that you  
23 listed?

24 A They have a little, not as much as Lawson, but  
25 they have experience, yes. More experience than ePlus



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1 does.

2 Q Within health care specifically, how important is  
3 it to the customers that they have a vendor that has  
4 prior experience specifically in the health care  
5 industry of significance?

6 A It's very important. It's a unique industry.

7 Q Finally, let's talk a little bit about if there's  
8 isn't an injunction. Is Lawson able to track and does  
9 it track its revenues generated related to the RSS and  
10 Punchout products?

11 A Yes.

12 Q How do you do that?

13 A Our internal financial systems are able to measure  
14 revenue by products.

15 THE COURT: How far back can you reach to do  
16 that?

17 THE WITNESS: Several years. I'm quite  
18 certain we probably cover most of the 2000s.

19 THE COURT: And you can fix it, so going  
20 forward you can do it?

21 THE WITNESS: It's a report we can run, yes.

22 BY MR. McDONALD:

23 Q If the Court ever set a royalty as a percentage of  
24 the revenues associated with those products, is that a  
25 number that could be readily calculated?

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1 A Yes.

2 MR. McDONALD: I have no further questions.

3 Thank you.

4 THE COURT: How much longer do you have, Mr.  
5 Robertson?

6 MR. ROBERTSON: I think I probably have about  
7 30, 35 minutes for this witness, Your Honor.

8 THE COURT: Is that Mr. Robertson time? I  
9 think we'll change court reporters at this time and  
10 give the witness a little break, too.

11 (Brief taken.)

12 (Transcript continues on page 226.)

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